The examination is being carried out on the **following application documents**:

Description, Pages

1-18 as published

Claims, Numbers

1-33 as annexed to the Int. Prel. Examination Report

Drawings, Sheets

1/2-2/2 as annexed to the Int. Prel. Examination Report

Comments:

1 PRIOR ART

The following document is referred to in this communication; the numbering will be adhered to in the rest of the procedure:

D1: WO 99/00067 A (THE UNIVERSITY OF IOWA RESEARCH FOUNDATION) 7 January 1999 (1999-01-07)

2. CLARITY

The application does not meet the requirements of Article 84 EPC, because claims 10 and 15-16 are not clear.

The above claims attempt to define the invention by specifying an unclaimed feature (see the Guidelines C-III, 4.8a). The bioactive substance does not form part of the claimed subject-matter.

3 NOVELTY AND INVENTIVE STEP

The present application does not meet the requirements of Article 52(1) EPC, because the subject-matter of claims 1-33 does not involve an inventive step in the sense of Article 56 EPC.

3.1 CLAIM 1

Document D1 discloses:

An implantable tissue-stimulating device (p. 1, l. 15-16) comprising:
a resiliently flexible elongate member having a plurality of electrodes mounted thereon (p. 50, l. 1-10), the elongate member surrounding a sealable reservoir for at least one bio-active substance (p. 86, l. 11-13), said elongate member having at least one substance egress means whereby the bio-active substance is releasable from said reservoir to the region of tissue surrounding said elongate member (p. 86, l. 11-13) following implantation of the assembly.

The subject-matter differs from the disclosure in D1 in that the above features are not disclosed in combination (as one single embodiment) in D1.

The technical problem to solved is:
- How to enable the delivery of drugs in the vicinity of an implanted electrode.

The problem and its solution are known from D1, where drugs are delivered near implanted sensing electrodes.
The need to deliver drugs in the vicinity of stimulation electrodes is obvious when problems arise after implantation of said stimulation electrodes. The solution to this problem is known from D1 and the skilled person would, when faced with this problem, easily combine the two embodiments in D1 and arrive at the claimed subject-matter.

3.2 CLAIMS 2-33

Dependent claims 2-33 do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the EPC with respect to inventive step, the reasons being as follows:
Claims 2, 4, 17-18, 25-27: D1, p. 9, l. 1-7.
Claims 5-7, 10-13: D1, p. 86, l. 11-13 and fig. 25.
Claims 3, 8-9, 14, 20-21, 28, 29-31, 32-33: These features are merely straightforward possibilities from which the skilled person would select, in accordance with circumstances, without the exercise of inventive skill.
Claim 19, 24: D1, p. 71, l. 1.
Claim 22-23: p. 70, l. 8-10.

4 WHEN FILING AMENDMENTS

When filing amended claims the applicant should consider the following:

4.1 The applicant should indicate in the letter of reply the difference of the subject-matter of the new claim vis-à-vis the state of the art (in particular with regard to D1) and the significance thereof, i.e. the underlying technical problem which those features of the independent claim which form a contribution over the prior art solve in an inventive way. In the letter of reply, the applicant is requested to apply the problem-solution approach for inventive step as outlined in the Guidelines, C-IV, 9.8.

4.2 The applicant should bring the description into conformity with the amended claims. Care should be taken during revision not to add subject-matter which extends beyond the content of the application as originally filed (Article 123(2) EPC).

4.3 In order to facilitate the examination of the conformity of the amended application with the requirements of Article 123(2) EPC, the applicant is requested to clearly identify the amendments carried out, irrespective of whether they concern amendments by addition, replacement or deletion, and to indicate the passages of the application as filed on which these amendments are based (see the Guidelines E-II, 1).

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Application No.	Ref.	Date
01 994 538.5 - 2305	NJH/FP6149215	20.04.2007
Applicant: Cochlear Limited		

Communication pursuant to Article 96(2) EPC

The examination of the above-identified application has revealed that it does not meet the requirements of the European Patent Convention for the reasons enclosed herewith. If the deficiencies indicated are not rectified the application may be refused pursuant to Article 97(1) EPC.

You are invited to file your observations and insofar as the deficiencies are such as to be rectifiable, to correct the indicated deficiencies within a period

of 4 months

from the notification of this communication, this period being computed in accordance with Rules 78(2) and 83(2) and (4) EPC.

One set of amendments to the description, claims and drawings is to be filed within the said period on separate sheets (Rule 36(1) EPC).

Failure to comply with this invitation in due time will result in the application being deemed to be withdrawn (Article 96(3) EPC).

Aronsson, Fredrik
Primary Examiner
for the Examining Division

Enclosure(s): 3 page/s reasons (Form 2906)

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Date
03.01.06

Reference	Application No./Patent No.
NJH/FP6149215	01994538.5 - 2305

Applicant/Proprietor
Cochlear Limited

Notice drawing attention to Article 86(2) EPC, Art. 2 No. 5 of the rules relating to fees
- Payment of the renewal fee plus additional fee -

The renewal fee for the 05. year fell due on 30.11.05 unless this date falls within the period covered by an interruption of the proceedings in accordance with Rule 90(1) EPC.

The amount of the renewal fee on that date was **EUR 430,00** (see OJ EPO 2001, 374, 377, 378, and 543).

The renewal fee was not paid by the due date.
The renewal fee may still be validly paid **up to the last day of the sixth calender month** following the due date, provided that the additional fee (10% of the renewal fee) is paid at the same time.

Within the above period which cannot be extended the following fees are to be paid:

Renewal fee for the 05. year:	EUR	430,00
Additional fee:	EUR	43,00
TOTAL AMOUNT	EUR	473,00

If the renewal fee and the additional fee are not paid in due time, the European patent application shall be deemed to be withdrawn (Art.86(3) EPC).

Note to users of the automatic debiting procedure:
The normal time limit for payment of the above renewal fee had already expired when the automatic debit order was received. The renewal fee and the surcharge will be debited automatically on the last day of the period of grace (Supplement to OJ EPO 2/1999; OJ EPO 2000, 62).

For the Examining Division

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28 July 2005

EPO - Munich
47
01. Aug. 2005

Dear Sirs

European Patent Application No. 01994538.5-2305
Applicant: Cochlear Limited
Our ref: NJH/FP6149215

In reply to the official letter of 31 May 2005, I inform you that the applicants desire to proceed with this application.

Yours faithfully

Nigel Hackney
Authorised Representative
MEWBURN ELLIS LLP
(To contact me personally please
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or email nigel.hackney@mewburn.com)